FILE COPY

FILED
DEC 31 1930
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

No. 76

FRANK E. FURST and FRED G. THOMAS, partners doing business under the firm name of FURST & THOMAS,
Appellants,

vs.

JAMES G. BREWSTER, ED. A. DAVIS and HENRY M. BEATY,
Appellees.

On Appeal from the Supreme Court of the State of Arkansas

BRIEF FOR APPELLANTS.

FRANK F. NESBIT,
M. DANAHER,
Attorneys for Appellants

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

SUBJECT INDEX AND SUMMARY OF ARGUMENT.

Page

I. THE OPINIONS OF THE COURTS BELOW 1

II. STATEMENT OF THE CASE 2

The Statutes in question 3

III. SPECIFICATION OF ERRORS 8

IV. ARGUMENT 12

I. THE ARKANSAS STATUTES SECTIONS 1826 and 1932 CRAWFORD & MOSES DIGEST, AS APPLIED IN THIS CASE, UNCONSTITUTIONALLY REGULATED INTERSTATE COMMERCE. 12

a. The contract between appellants and defendant Brewster calling for the importation of goods and merchandise from Tennessee into Arkansas for a pecuniary consideration payable by the defendant to the plaintiffs was a transaction of interstate commerce 12

b. These statutes were relied upon as the sole ground for denying the appellants' right to maintain an action to recover money due from Brewster 21

c. The right to enforce and collect in the state courts debts arising out of such transactions is a necessary incident of interstate commerce and the imposition of unreasonable conditions upon the exercise of this right unduly burdens interstate commerce and is unconstitutional 24

1. This court has frequently so decided and the situation in which the parties were placed by the ruling of the courts below brings this case exactly within those decisions 24

TABLE OF CASES AND STATUTES CITED.

Page

Cases.

Adair v. U. S., 208 U. S. 161, 177, 52 L. Ed. 436, 443 19
Buck Stove & Range Co. v. Vickers, 226 U. S. 205, 57 L. Ed. 189 30
Butler Bros. Shoe Co. v. U. S. Rubber Co., 156 Fed. 1, 84 C. C. A. 167, 183 15
Caldwell v. North Carolina, 187 U. S. 622, 47 L. Ed. 336 17
Crutcher v. Kentucky, 141 U. S. 47, 35 L. Ed. 649, 11 Sup. Ct. 851 29
Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 66 L. Ed. 239 .....14, 30
Furst & Thomas v. Hartzell, 172 Ark. 118; 291 S. W. 828 .....2, 7, 12, 22
Gibbons v. Ogden, 9 Wheat 1, 6 L. Ed. 23 17
International Text-Book Co. v. Lynch, 218 U. S. 664 27
International Text-Book Co. v. Peterson, 218 U. S. 664 27
International Text-Book Co. v. Pigg, 217 U. S. 107, 54 L. Ed. 685 .....14, 26, 30
Pensacola Telegraph Co. v. Western Union Telegraph Co., 96 U. S. 24, L. Ed. 7-8 17
Sioux Remedy Co. v. Cope, 235 U. S. 197, 59 L. Ed. 193 27
Welton v. Missouri, 91 U. S. 275, 280, 23 L. Ed. 347, 349, ... 14
Wilson-Moline Buggy Co. v. Hawkins, 223 U. S. 713 30
W. T. Rawleigh Medical Co. v. Rose, 133 Ark. 505 13

Statutes.

Sections 1826 and 1832, Crawford & Moses Digest, Statutes of Arkansas 3, 9, 10, 11, 21, 22, 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

No. 76.

FRANK E. FURST and FRED G. THOMAS, partners doing business under the firm name of FURST & THOMAS,
Appellants,

vs.

JAMES G. BREWSTER, ED. A. DAVIS and HENRY M. BEATY,
Appellees.

On Appeal from the Supreme Court of the State of Arkansas

BRIEF FOR APPELLANTS.

I.

The Opinions of the Courts Below

The opinion in the Supreme Court of Arkansas appealed from is not yet officially reported. It is reprinted for convenience in the record p. 97. The opinion is reported in 21 Southwestern (2d) 863. The judgment without the opinion is reported 180 Ark.

1167. This opinion adopts the reasoning of the same court in a similar case, *Furst & Thomas* v. *Hartzell*, officially reported 172 Ark. 118; also reprinted for convenience R. 100; also reported in 291 Southwestern 828.

II.

Statement of the Case

The action was originally brought by appellants in the Circuit Court of Bradley County, Arkansas, to recover $788.53 the balance due on purchase price of merchandise sold by appellants to appellee Brewster under a written contract with him (R. 2). Said merchandise consisted of articles of food, toilet articles, drugs, and medicines (R. 84); all of said merchandise was shipped in interstate commerce by appellants from Memphis, Tennessee, to Brewster in Drew County, Arkansas, by parcel post, express or common carrier by railroad.

The answers originally admitted payments upon account but denied the amount of the balance owing. In amended answers (R. 7, 9) defendants set up that appellants doing business as Furst & Thomas, a partnership, were agents of Furst-McNees Company, an Illinois corporation which had not qualified to do business as a foreign corporation in the state of Arkansas as required by section 1826 of the statutes of Arkansas by filing in the office of the secretary of state copy of its articles of incorporation, duly certified, statement of its assets and liabilities, the amount of capital employed in the state, designating its general office or place of business in the state, and naming an agent upon whom process might be served. The Furst-McNess Company was not at any time a party to the action.

And appellants further set up that because of this failure of Furst-McNess Company to qualify as a foreign corporation, appellants could not maintain an action in courts of the state of Arkansas to enforce a contract with Brewster and to recover the price of merchandise sold to him in interstate commerce because of the prohibition of section 1832 of the said statutes.

The Statutes in Question.

The statutes relied upon by the defendants in their pleadings, Sections 1826 and 1832 of Crawford & Moses Digest of the Statutes of Arkansas (Acts 1907, page 744) read as follows:

> "1826. Every company or corporation incorporated under the laws of any other State, Territory, or country, including foreign railroad and foreign fire and life insurance companies, now or hereafter doing business in this State, shall file in the office of the Secretary of State of this State a copy of its charter or articles of incorporation or association, or a copy of its certificate of incorporation, duly authenticated and certified by the proper authority, together with a statement of its assets and liabilities and the amount of its capital employed in this State, and shall also designate its general office or place of business in this State, and shall name an agent upon whom process may be served.
>
> "1832. Any foreign corporation which shall fail to comply with the provisions of this act, and shall do any business in this State, shall be subject to a fine of not less than $1,000.00, to be recovered before any court of competent jurisdiction, and all such fines so recovered shall be paid into the general revenue fund of the county in which

the cause of action shall accrue, and it is hereby made the duty of the prosecuting attorneys to institute said suits in the name of the State, for the use and benefit of the County in which the suit is brought, and such prosecuting attorney shall receive as his compensation one-fourth of the amount recovered; and as an additional penalty, any foreign corporation which shall fail or refuse to file its articles of incorporation or certificate as aforesaid can not make any contract in this State which can be enforced by it either in law or in equity, and the complying with the provisions of this act after the date of any such contract, or after any suit is instituted thereon, shall in no way validate said contract."

The evidence showed that appellee Brewster had frequently admitted his indebtedness to appellants, and that the contract with Brewster was made with citizens of another state and called for the interstate shipment of goods, that the merchandise sold to Brewster, to recover the balance due on which this suit was instituted, was shipped to him in interstate commerce from appellants' warehouse at Memphis, Tennessee, to Brewster in Drew County, Arkansas. There was evidence that Furst & Thomas was a partnership having its principal place of business at Freeport, Illinois, and warehouses at Memphis, Tennessee, Baltimore, Maryland, and Oakland, California. (R. 81.) The Furst-McNess Company, an Illinois corporation, manufactured medicines, drugs and food products at its factory at Freeport, Illinois. It sold some of its products in interstate commerce directly to wholesale druggists throughout the United States, but sold most of its products to Furst & Thomas. Furst & Thomas shipped these goods to their warehouses mentioned

above. There they were sold and reshipped by Furst & Thomas in interstate commerce to itinerant and local retail dealers. Brewster was such a dealer who ordered from appellants by mail and to whom the goods were shipped in interstate commerce by appellants (R. 21, 22, 26, 37, 80, 81, 82). Memorandum bills of lading showing shipments from appellants at Memphis, Tenn., to Brewster in Arkansas are in evidence (R. 25, 26). Appellees introduced evidence that the Furst-McNess Company had not qualified as a foreign corporation under the Arkansas statute (R. 15). They also contended that appellants in making the contract with Brewster and in bringing suit against him were acting as agents of the Furst-McNess Company. There was no evidence that said Furst-McNess Company had any place of business in or did any business in Arkansas. Appellees contended that some provisions in the contract between appellants and Brewster (R. 2) and letterheads and literature introduced in evidence tended to show that Brewster was an agent of appellants.

Appellants drew in question the validity of the said statutes of Arkansas as sought to be applied in this case on the ground of their being repugnant to the Constitution of the United States as unduly burdening interstate commerce and as interfering with the exclusive power of Congress to regulate commerce among the states. Appellants requested the court to instruct the jury that the said Arkansas statutes had no application to the case and that to so apply them as to prevent appellants from maintaining an action against Brewster to recover money due on a transaction involving interstate commerce would be repugnant to Art. I, Section 8, Clause 3 of the Constitution

of the United States, which the court refused to do (R. 91).

The court further, over objection by appellants, instructed the jury that while Furst & Thomas, a partnership, had a right to do business in Arkansas and could recover from Brewster even though he was their agent, said partnership, acting as an agent of Furst-McNess Company, a foreign corporation which had not qualified as such in accordance with the statutes of Arkansas could not maintain an action in courts of Arkansas, and that if the jury found that appellants were the agents of Furst-McNess Company, a non-qualified foreign corporation, and that Brewster was appellants' agent, then the jury should find for the appellees (R. 88).

The court further instructed the jury that if appellee Brewster were the agent of appellants, and they in turn were the agents of Furst-McNess Company, a foreign corporation, not qualified in accordance with the statutes of Arkansas, the jury should find for the defendants below (R. 93); and the jury did find for the defendants below.

These rulings, instructions, and findings were adopted and affirmed by the highest court of the state of Arkansas in which a decision could be had, to wit, the Supreme Court of Arkansas. Notwithstanding the contention of appellants that the said statutes of the state of Arkansas as so construed and applied were invalid on the ground of their being repugnant to the Constitution of the United States, and particularly to Art. 1, Section 8, Clause 3, the said Supreme Court of Arkansas decided in favor of the validity of the said statutes so applied and construed (R. 97, 100).

The Supreme Court of Arkansas adopting its reasoning in the earlier case of *Furst* and *Thomas* v. *Hartzell*, 172 Ark. 118, (R. 100), while recognizing that the application of the statute which was made was repugnant to the commerce clause of the Constitution of the United States if the transactions involved were interstate commerce, took the view that if Brewster was appellants' agent, and not their vendee, the contract and transactions between them, even though requiring the interstate shipment of goods, were not interstate commerce. Appellants contended that the transactions were clearly sales (R. 2) but even if they were not, they were still interstate commerce. The court further took the view that although the corporation had no office or place of business and was not doing business in the state, the conclusion that Brewster was its agent, brought it within the state, so that the statute above quoted applied. Finally the court held that the statute applied to appellants as the agents of the foreign corporation and prevented them from maintaining an action in the state courts to enforce the contract with Brewster.

The court in effect held that the state courts of Arkansas were closed to appellants and that under the provisions of the Arkansas statutes prohibiting a nonqualified foreign corporation from enforcing a contract in the Arkansas courts they could not maintain an action to recover money due on sales and shipments of goods in interstate commerce to appellee Brewster because appellants, as individuals and partners, acted as agents of the Furst-McNess Company, an Illinois corporation, which had not qualified as required by the statute. These statutes, so applied were repugnant to the commerce clause of the Constitution of

the United States and yet were held valid by the Supreme Court of Arkansas.

III.

Specification of Errors

1. The Supreme Court of Arkansas erred in holding that appellants could not maintain an action in the courts of Arkansas against appellees to recover money due on a transaction involving interstate commerce because appellants were acting as agents of a foreign corporation, Furst-McNess Company, selling its goods in interstate commerce, which said foreign corporation had not complied with the Arkansas statutes requiring foreign corporations to file a statement of their assets and liabilities and designate an agent in the state upon whom process might be served; and erred in holding that such denial of appellants' right to maintain an action did not impose a restraint on interstate commerce and unduly burden and interfere with such commerce and was not repugnant to Art. I, Section 8, Clause 3 of the Constitution of the United States of America.

2. The Supreme Court of Arkansas erred in holding that sections 1826 and 1832 of the statutes of Arkansas (Crawford & Moses Digest) as construed and applied in this case so as to deny appellants' right to maintain an action in the courts of Arkansas upon a transaction involving interstate commerce are constitutional and not repugnant to the commerce clause of the Constitution of the United States; and erred in not holding that said sections as so construed and applied are unconstitutional and interfered with the exclusive power of Congress to regulate interstate

commerce granted by the Constitution, Art. I, Section 8, Clause 3 of the United States of America.

3. The Supreme Court of Arkansas erred in holding that sections 1826 and 1832 of the statutes of Arkansas (Crawford & Moses Digest) as construed and applied in this case did not materially or directly burden interstate commerce.

4. The Supreme Court of Arkansas erred in holding that the laws of the state of Arkansas as expressed in sections 1826 and 1832 of Crawford & Moses Digest of the statutes of Arkansas applied to the contract between the appellants and James G. Brewster, one of the appellees, for the reason that such holding interfered with commerce among the states of the United States, and contravened Art. I, Section 8, Clause 3 of the Constitution of the United States of America.

5. The Supreme Court of Arkansas erred in holding that appellants could not maintain an action in the state courts of Arkansas upon a transaction involving interstate commerce because Furst-McNess Company, an Illinois corporation, and not a plaintiff in this suit, was doing business in Arkansas through appellees James G. Brewster for the reason that such holding interfered with and burdened commerce among the states of the United States and contravened Art. I, Section 8, Clause 3 of the Constitution of the United States of America.

6. The Supreme Court of Arkansas erred in holding that James G. Brewster, one of the appellees, was the agent of appellants and also the agent of Furst-McNess Company an Illinois corporation not a party to this suit; and in holding that by reason thereof appellants could not maintain an action in the state courts of Arkansas because said Furst-McNess Company had

not complied with the foreign corporation law of the state of Arkansas as expressed in sections 1826 and 1832 of Crawford & Moses Digest of the statutes of Arkansas, for the reason that such holding interfered with and burdened commerce among the states of the United States, and interfered with the exclusive power of Congress to regulate interstate commerce, and contravened Art. I, Section 8, Clause 3 of the Constitution of the United States of America.

7. The Supreme Court of the state of Arkansas erred in holding that appellants were the agents of Furst-McNess Company, an Illinois corporation not a party to this suit, and in holding that because appellants were such agent they could not maintain an action in the state courts of Arkansas on a transaction involving interstate commerce because said Furst-McNess Company had not complied with the foreign corporation law of Arkansas as expressed in sections 1826 and 1832 of Crawford & Moses Digest of the statutes of Arkansas for the reason that such holding interfered with and burdened commerce among the states of the United States, and interfered with the exclusive power of Congress to regulate interstate commerce and contravened Art. I, Section 8, Clause 3 of the Constitution of the United States of America.

8. The Supreme Court of the state of Arkansas erred in holding that appellants were the agents of Furst-McNess Company, an Illinois corporation, and that appellants in their capacity as such agents for said corporation entered into a contract with said James G. Brewster sued on in this action, and by virtue of said contract made James G. Brewster an agent of said Furst-McNess Company in the state of

Arkansas, and that said James G. Brewster in selling the goods which he purchased from appellant in interstate commerce in pursuance of the terms of said contract was not acting as a merchant selling the goods for himself, but was acting as agent of said Furst-McNess Company in selling for that corporation and that such conduct on the part of said James G. Brewster constituted a doing business in the state of Arkansas by said Furst-McNess Company which had not qualified as required by sections 1826 and 1832 of Crawford & Moses Digest of the statutes of Arkansas, and that therefore appellants could not maintain an action against said James G. Brewster; whereas in truth and in fact as shown by the undisputed evidence said James G. Brewster was not the agent of appellants or of Furst-McNess Company, and there was no evidence introduced at the trial to show that said Furst-McNess Company had ever done any business in the state of Arkansas or had any place of business therein; and the Supreme Court of Arkansas erred in holding that there was sufficient evidence to support the verdict of the jury, and in affirming the ruling of the trial court refusing to instruct the jury that sections 1826 and 1832 of Crawford & Moses Digest of the statutes of Arkansas had no application to the case and should not be applied, because to do so would interfere with and burden commerce among the states of the United States, and would interfere with the exclusive power of Congress to regulate interstate commerce, and contravene Art. I, Section 8, Clause 3 of the Constitution of the United States of America.

IV.

ARGUMENT

I. The Arkansas Statutes, Sections 1826 and 1832, Crawford & Moses Digest, as Applied in this Case, Unconstitutionally Regulated Interstate Commerce.

a. The contract between appellants and defendant Brewster calling for the importation of goods and merchandise from Tennessee into Arkansas for a pecuniary consideration payable by the defendant to the plaintiffs was a transaction of interstate commerce.

Under the terms of the contract (R. 2) made by Brewster of Warren, Arkansas, with Furst & Thomas at Freeport, Illinois, they agreed to sell and deliver merchandise to him from their nearest branch warehouse, which was located at Memphis, Tennessee (R. 26). Pursuant to this contract goods and merchandise were shipped from Memphis, Tennessee, to Brewster in Warren, Arkansas. A contract between citizens of different states, calling for the interstate sale and transportation of goods, the importation of goods into one state from another state marks the transaction as one in interstate commerce. The transactions were sales and should be so construed by this court, but they were interstate commerce in any event. The only suggestion that it was not such is that involved in the reasoning of the Supreme Court of Arkansas in their opinion in *Furst & Thomas* vs. *Hartzell*, (R. 100) which was relied upon and impliedly incorporated by reference in the opinion in this case, where it is suggested that if the contract between Furst & Thomas

and Brewster was one of purchase and sale it was interstate commerce, but if Brewster was an agent of Furst & Thomas and of the non-resident foreign corporation and the goods were consigned to him to be sold and he owed the appellants the balance due under his contract with them, the transaction between them and Brewster would not be interstate commerce, and the provisions of the Arkansas statute would prevent the appellants from maintaining a suit on the contract. The Supreme Court of Arkansas devotes no discussion or consideration to the decisions of this court in reaching its conclusion which is merely stated in a sentence. The Supreme Court of Arkansas had previously recognized that this statute could not be applied to interstate commerce in *W. T. Rawleigh Medical Co.* vs. *Rose*, 133 Ark. 505. Its decision in this case therefore rests entirely on the ground that the contract and transactions involved were not in interstate commerce.

The transaction is not taken out of the field of interstate commerce by the mere designating of one party as the agent of the other. As between them if the contract involves the interstate carriage of goods, interstate payment therefor and mercantile intercourse between citizens of different states, it is a transaction in interstate commerce, whether one is the vendee, agent, consignee or factor of the other. The Supreme Court of Arkansas takes altogether too narrow a view of what constitutes interstate commerce and overlooks the fact that the basis of the suit brought was the contract and transactions between Furst & Thomas and Furst-McNess Company on the one hand and Brewster on the other involving the interstate transportation of goods and not any contracts

or transactions between Brewster and other citizens of Arkansas.

Brewster owed Furst & Thomas the price of the goods sold him and transported in interstate commerce from Tennessee to Arkansas irrespective of whether he was their agent or not. He agreed to pay it to them at Freeport, Illinois. The transactions between him and Furst & Thomas were transactions in interstate commerce and they were not deprived of this character and made into intrastate transactions by calling Brewster agent for Furst & Thomas and for Furst-McNess Company, a foreign corporation.

This Court said in *Welton* v. *Missouri*, 91 U. S. 275, 280, 23 L. ed. 347, 349:

> "'Commerce' is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale and exchange of commodities."

It said in *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282, 66 L. ed. 239:

> "The commerce clause of the Constitution Art. I, Section 8, Clause 3, expressly commits to Congress and impliedly withholds from the several states the power to regulate commerce among the latter. Such commerce is not confined to transportation from one state to another but comprehends all commercial intercourse between different states and all the component parts of that intercourse."

In *International Text-Book Co. v. Pigg*, 217 U. S. 107, 54 L. ed. 685, this court, in passing upon a similar interference with interstate commerce by a statute of

the state of Kansas where the company maintained agents for the purpose of soliciting and obtaining contracts with students, said, quoting with approval the language of Judge Sanborn, in *Butler Bros. Shoe Co. v. United States Rubber Co.*, 156 Fed. 1, 84 C. C. A. 167, 183.

> " 'all interstate commerce is not sales of goods. Importation into one state from another is the indispensable element, the test, of interstate commerce; and every negotiation, contract trade and dealing between citizens of different states which contemplates and causes such importation, whether it be of goods, persons, or information, is a transaction of interstate commerce.' If intercourse between persons in different states by means of telegraphic messages conveying intelligence or information is commerce among the states which no state may directly burden or unnecessarily encumber, we cannot doubt that intercourse or communication between persons in different states, by means of correspondence through the mails, is commerce among the states within the meaning of the Constitution, especially where, as here, such intercourse and communication really relate to matters of regular continuous business, and to the making of contracts and the transportation of books, papers, etc., appertaining to such business. In our further consideration of this case we shall assume that the business of the Text-Book Company by means of correspondence through the mails and otherwise between Kansas and Pennsylvania was interstate in its nature."

Butler Bros. Shoe Co. v. United States Rubber Co. cited above, in which certiorari was denied, 212 U. S. 577, and which was quoted with approval in International Text-Book Co. *v.* Pigg *supra* dealt with the

constitutionality of a statute of the state of Colorado, under the terms of which the United States Rubber Company was prevented from maintaining an action in the courts of Colorado against Butler Bros. Shoe Company, doing business in Denver, Colorado, with citizens of Colorado. The principal contention made before the Circuit Court of Appeals was that inasmuch as the contract between the United States Rubber Co. and Butler Bros., on which the action was brought, was a factorage contract by which Butler Bros. Co. received goods on consignment from the United States Rubber Co. and sold them in the state of Colorado, it was not a transaction in interstate commerce and therefore the state of Colorado might constitutionally prohibit the maintaining of an action upon it by the Rubber Co. in the Colorado courts. The United States Rubber Company had its principal office in New York and a warehouse in Chicago from which it shipped merchandise to consignees and purchasers. Butler Bros. Co. was engaged in the purchase and sale of rubber goods at Denver, Colorado. By the contract involved in the suit the Rubber Company appointed the Butler Bros. Co. its agents to sell and agreed to consign to it at Denver certain goods at agreed prices, the Butler Bros. Company to pay the Rubber Company the agreed prices. Pursuant to this contract the Rubber Company shipped from its warehouse in Chicago, Illinois, and its mill in New Jersey to Denver, goods and merchandise called for by the orders of the Butler Bros. Co. In passing upon the contention that as the Butler Bros. Co. was only the agent of United States Rubber Co. the transactions and contract between them upon which suit was brought by the Rubber Co. were not transactions in interstate commerce,

Mr. Justice Sanborn for the Circuit Court of Appeals for the Eighth Circuit said:

> "Nor is the fact that these contracts did not evidence sales of the goods determinative of this question. A sale is not the test of interstate commerce. All sales of sound articles of commerce which necessitate the transportation of the goods sold from one state to another, are interstate commerce; but all interstate commerce is not sales of goods. Importation into one state from another is the indispensable element, the test, of interstate commerce; and every negotiation, contract, trade, and dealing between citizens of different states, which contemplates and causes such importation, whether it be of goods, persons, or information is a transaction of interstate commerce. 'Since the case of Gibbons v. Ogden, 9 Wheat, 1, 6 L. ed. 23,' said Chief Justice Waite in Pensacola Telegraph Co. v. Western Union Telegraph Co., 96 U. S. 24, L. Ed. 7-8, 'it has never been doubted that commercial intercourse is an element of commerce which comes within the regulating power of Congress.' The contracts before us constituted and caused commercial intercourse between citizens of different states. Their chief purpose and their principal effect were the importation of sound articles of commerce into the state of Colorado from other states, and they necessarily constituted transactions of interstate commerce." (Citing cases)

In *Caldwell* v. *North Carolina*, 187 U. S. 622, 47 L. Ed. 336, this Court had under consideration the validity of a license tax imposed under an ordinance of the City of Greensboro, North Carolina, on the business of selling picture frames and photographs. It was contended that interstate commerce was not involved

because the shipments of picture frames which were said to be taxable under the ordinance were not made directly from another state to purchasers in North Carolina but were made from Illinois to an agent of the shipper in North Carolina who in turn sold them to purchasers in North Carolina. This court held that that fact did not deprive the transactions of their character as interstate commerce, saying:

> "Nor does the fact that these articles were not shipped separately and directly to each individual purchaser, but were sent to an agent of the vendor at Greensboro, who delivered them to the purchasers, deprive the transaction of its character as interstate commerce. It was only that the vendor used two instead of one agency in the delivery. It would seem evident that, if the vendor had sent the articles by an express company, which should collect on delivery, such a mode of delivery would not have subjected the transaction to state taxation. The same could be said if the vendor himself, or by a personal agent, had carried and delivered the goods to the purchaser. That the articles were sent as freight by rail, and were received at the railroad station by an agent who delivered them to the respective purchasers, in nowise changes the character of the commerce as interstate.
>
> "Transactions between manufacturing companies in one state, through agents, with citizens of another, constitute a large part of interstate commerce; and for us to hold, with the court below, that the same articles, if sent by rail directly to the purchaser, are free from state taxation, but, if sent to an agent to deliver, are taxable through a license tax upon the agent, would evidently take a considerable portion of such traffic out of the salutary protection of the interstate commerce clause of the Constitution."

In *Adair* v. *United States,* 208 U. S. 161, 177, 52 L. Ed. 436, 443, the court said:

> "Commerce among the several states comprehends traffic, intercourse, trade navigation, communication, the transit of persons, and the transmission of messages by telegraph—indeed, every species of commercial intercourse among the several states, but not that commerce 'completely internal, which is carried on between man and man, in a state, or between different parts of the same state, and which does not extend to or affect other states.'"

The contract and transactions between the appellants and the appellee Brewster was commercial intercourse between different states, involved the interstate transportation of goods by common carrier by railroad, the interstate transmission of orders and payments by mail and were by every test and definition laid down by this court transactions in interstate commerce. The cause of action upon which the suit was brought was one arising between citizens of different states to recover money due for the interstate transportation of goods and it was in no sense a transaction "completely internal which is carried on between man and man in a state * * * which does not extend to or affect other states." The transactions could not be deprived of their interstate character and rendered intrastate and outside the exclusive regulation by Congress by the mere device of calling appellee Brewster an agent of appellants and of the foreign corporation, Furst-McNess Company. We submit that there was no evidence upon which it could be found or upon which the jury could be permitted to find that Brewster was the agent of either the appellants or the Furst-

McNess Company. He bought goods from them. But it is not necessary to decide that question. The appellants were entitled to recover the money due on the contract and transactions arising out of interstate commerce from Brewster, even if he were their agent and the trial court so instructed the jury. (R. 88). But the court took the mistaken view that if Brewster was the agent of Furst & Thomas and of Furst-McNess Company, the non-qualified foreign corporation, the transactions *between them* were then not transactions in interstate commerce and appellants as the agent of a non-qualified foreign corporation could not maintain their action because of the provisions of the Arkansas statute above referred to. The case was brought within the operation of the Arkansas statute and taken outside of the field of interstate commerce in the opinion of the courts below at one stroke by holding that Brewster was the agent of appellants and they in turn were the agents of the Furst-McNess Company. Under the decisions of this court such a device was ineffectual to transform the character of the transactions between the appellants and Brewster from interstate commerce into intrastate commerce. Even if Brewster was the agent of appellants and of the foreign corporation the contract and transactions *between them and him* were transactions in interstate commerce, and these were the only transactions involved in the suit brought by appellants.

It is submitted that the record shows that the transactions out of which this suit arose were sales and transactions in interstate commerce involving commercial intercourse between citizens of different states and the interstate importance and transportation of goods. The transactions remained such irrespective

of the fictional legal form which may have been imposed upon the relationship between appellants and Brewster by the rulings of the court below.

b. These statutes were relied upon as the sole ground for denying the appellants' right to maintain an action to recover money due from Brewster.

Brewster had frequently admitted his indebtedness in writing to the appellants (R. 27) and no evidence was introduced to show that he was not indebted to the appellants in the amount claimed or upon the transactions relied upon. All of the appellee's evidence was devoted to sustaining the defense set out in the amended answer (R. 7, 8, 9) that Furst & Thomas were the agents of Furst-McNess Company, a corporation of the State of Illinois which was not authorized to do business in the State of Arkansas and which had not complied with the statutes of that state by filing with the secretary of state a copy of its charter, a statement of its assets and liabilities and designating a general office and agent for the service of process. It was alleged that appellants contracted with appellee and sued only as agents for the Furst-McNess Company, a foreign corporation (R. 8, 9) and that the suit was in legal effect a suit by said foreign corporation. The trial court took this view and so instructed the jury (R. 88, 93). A deposition of the Secretary of State of Arkansas was taken showing that the Furst-McNess Company had not qualified to do business as provided in Section 1826 Crawford & Moses Digest, Statutes of Arkansas (R. 15, 16). It was urged that neither Furst-McNess Company nor appellants as their agents could maintain any action in the Arkansas courts to enforce the con-

tract with Brewster because of the provisions of Section 1832 of the statutes. The appellants requested the court to instruct the jury that these statutes had no application to the case and did not constitute any defense for the reason that the transactions involved in the suit were transactions in interstate commerce and that to apply these statutes so as to prevent appellants from maintaining a suit on the contract and to instruct the jury that these provisions of the statute constituted a defense would contravene Section 1, paragraph 8, clause 3 of the Constitution of the United States giving Congress power to regulate commerce among the states (R. 91). The court refused this but instructed the jury that if they found that Furst & Thomas, appellants, were the agents of Furst-McNess Company, which was a foreign corporation which had not complied with the laws of Arkansas and had no right to do business in the state and that Brewster acted as agent for Furst & Thomas then their verdict should be for the defendant (R. 86, 88, 93, 94). These instructions were approved by the Supreme Court of Arkansas (R. 98). The sole defense therefore and the only basis for denying appellants' right to recover were these provisions of the statute.

The Supreme Court of Arkansas in its opinion in *Furst & Thomas* v. *Hartzell* which was referred to and adopted in its opinion in this case, (R. 97) stated the same proposition somewhat more succinctly by saying that if the contract sued upon was a contract of agency it was subject to the terms of the "Wingo Act" (Acts 1907, page 744) relating to non-resident corporations. (Now Sections 1826 and 1832 Crawford & Moses Digest) and that as the contract sued on was one of agency it was not a transaction of interstate com-

merce and appellants were within the terms of the statute as agents of a non-qualified foreign corporation and were not entitled to maintain an action or recover because of the provisions of these statutes (R. 105-106). There was no evidence that the Furst-McNess Company had any place of business or was doing business in Arkansas, but as Brewster was held to be their agent this was sufficient in the view of the Supreme Court of Arkansas to bring the corporation within the statute.

The Supreme Court of Arkansas construed these statutes as applying to the agents of a foreign corporation as well as to the foreign corporation itself. As so construed appellants stood in the position of the foreign corporation and if, as the decisions of this court hereafter cited show, the corporation could not be denied the right to sue in the state courts to recover money due on a transaction of interstate commerce because of its non-compliance with such a statute, neither can the appellants be so deprived because of their agency for such a corporation. The appellants and the Furst-McNess Company were both engaged in interstate commerce. The appellants had the same right freely to contract with citizens of Arkansas in interstate commercial transactions and to go into the state courts of Arkansas to enforce said contracts and to collect money due thereon as a foreign corporation engaged in such commerce. Where the statutes of the state are applied as they were in this case to prohibit such right of action to individuals engaged in interstate commerce because they act as agents of a non-qualified foreign corporation, the state statute lays the same unreasonable burden and restriction on interstate commerce as would exist if applied directly to the foreign corporation itself.

The record demonstrates that the only defense raised in the case was the Arkansas statutes heretofore quoted; that they were applied to appellants as agents of a non-resident foreign corporation said to be doing business in the state because Brewster was its agent, so as to prevent appellants from freely coming into the state of Arkansas and maintaining an action in the state courts to recover money due from Brewster on a contract involving transactions in interstate commerce. These transactions were held by the lower court not to be transactions of interstate commerce because Brewster was the agent or consignee of Furst & Thomas, and of the Furst-McNess Company rather than vendee. By reason of the provisions of these statutes a verdict was rendered for the appellee and it was in effect held that the state courts of Arkansas were closed to appellants and that they could not because of these statutes maintain an action upon their contract with Brewster to recover money due on shipments of goods to him in interstate commerce.

c. The right to enforce and collect in the state courts debts arising out of such transactions is a necessary incident of interstate commerce and the imposition of unreasonable conditions upon the exercise of this right unduly burdens interstate commerce and is unconstitutional.

1. This court has frequently so decided and the situation in which the parties were placed by the ruling of the courts below brings this case exactly within those decisions.

Under the instructions of the trial court approved by the Supreme Court of Arkansas it was held that

while Furst & Thomas, appellees, a partnership had a right to do business in Arkansas and to recover from Brewster even though he was their agent, said partnership acting as an agent of Furst-McNess Company, a foreign corporation which had not qualified as such in accordance with the statutes of Arkansas, were within the provisions of the statute and could not maintain an action in the courts of Arkansas and if the jury found that appellees were the agents of Furst-McNess Company, a non-qualified foreign corporation and that Brewster was appellees' agent, then the jury should find for the appellees (R. 87, 88).

The provision of the Arkansas statute particularly relied upon was the following language of Section 1832, Crawford & Moses Digest of the Statutes of Arkansas, defining the penalties which attached to a foreign corporation which had failed to comply with the requirements of Section 1826 quoted above:

> "And as an additional penalty any foreign corporation which shall fail or refuse to file its articles of incorporation or certificate as aforesaid cannot make any contract in this state which can be enforced by it either in law or in equity."

Pursuant to these rulings the court held that the contract between Brewster and appellants could not be enforced in an action at law in the state court of Arkansas. This statute, the validity of which as so applied is here drawn in question, is very similar in its terms to the statutes of other states which have been given a similar effect in similar cases, which this court has always held unconstitutionally interfered with the exclusive power of Congress to regulate interstate commerce. The first case in this court passing direct-

ly upon this question was *International Text-Book Co.* vs *Pigg,* 217 U. S. 91, 54 L. ed. 678. A Kansas statute of similar purport had been held in that case by the Supreme Court of Kansas to prevent the Text-Book Co. from maintaining an action to recover the amount due on a contract made by it with Pigg. The court held that the business of the company was interstate commerce and the contract sued on was a transaction in interstate commerce. The court said of the statute:

> "It imposes a condition upon a corporation of another state seeking to do business in Kansas which in the case of interstate business is a regulation of interstate commerce and directly burdens such commerce. The state cannot thus burden interstate commerce * * *.
>
> "In this connection it is to be observed that by the statute the doors of Kansas courts are closed against the Text-Book Company, unless it first obtains from the secretary of state a certificate showing that the 'statement' mentioned in Section 1283 has been properly made. In other words, although the Text-Book Company may have a valid contract with a citizen of Kansas, one directly arising out of and connected with its interstate business, the statute denies its right to invoke the authority of a Kansas court to enforce its provisions unless it does what we hold it was not, under the Constitution, bound to do; namely, make, deliver, and file with the secretary of state the statement required by Section 1283. * * * It is sufficient to say that the requirement of the statement mentioned in Section 1283 of the statute imposes a direct burden on the plaintiff's right to engage in interstate business, and therefore is in violation of its constitutional rights. It is the established doctrine of this court that a state may not, in any form or under any guise, directly burden the prosecution of interstate business."

The statute was said to not be "in the way of the enforcement in any state court of competent jurisdiction of the plaintiff's right to a judgment against the defendant for the amount to be conceded due from him to the Text-Book Company under his contract." The ruling and decision of the court in that case are directly applicable to the case at bar.

The same conclusion was reached by the court in a *per curiam* opinion applying the same principles to statutes of Wisconsin and Vermont, respectively, in *International Text-Book Co.* vs. *Peterson* and *International Text-Book Co.* vs. *Lynch*, 218 U. S. 664.

In *Sioux Remedy Co.* vs. *Cope*, 235 U. S. 197, 59 L. Ed. 193, the court had before it a ruling of the Supreme Court of South Dakota affirming the action of the trial court in dismissing an action by a foreign corporation to enforce payment of the purchase price of merchandise sold in interstate commerce, under the provisions of a statute of North Dakota prohibiting foreign corporations from suing or maintaining any action at law or otherwise in any of the courts of the state until it should have filed in the office of the secretary of state an authenticated copy of its charter and providing that no action should be commenced on maintained in any of the courts of this state or any contract, agreement or transaction made or entered into by such corporation until it shall have appointed a resident agent upon whom process may be served and to pay certain fees. The contract involved in that case was almost identical in its terms with that involved here. The contract is printed in the record in that case in this court at page 8. It provides for the sale of goods to Cope but in other parts it is an agency and consignment agreement. The same contention

was made in that case, namely, that Cope was an agent of the foreign corporation and therefore there was no interstate commerce. The Supreme Court of South Dakota correctly held that the transactions were interstate commerce as they involved the interstate transportation of goods whether Cope was an agent or a vendee. The Supreme Court of South Dakota said, and in this respect its decision was affirmed by this court:

> "It matters not whether the contract be one under which a party is to buy goods or sell them or rent them; the sole question is whether or not as a part of the carrying out of such contract it is contemplated that there shall be a shipping from one stage to another of the identical goods to which the contract relates."

The South Dakota court incorrectly held however that their statute applied even if the transactions were transactions in interstate commerce. This court treated the transactions under the contract as sales from the Sioux Remedy Co. to Cope and so described them in its opinion. That is the view that it is submitted should be taken of the transactions in the case at bar.

The court in holding such application of the provisions of the South Dakota statute to be an unconstitutional imposition of unreasonable burdens upon interstate commerce said:

> "Through a long series of decisions dealing with the scope and effect of the commerce clause it has come to be well settled that a state, while possessing power to adopt reasonable measures to promote and protect the health, safety, morals,

and welfare of its people, even though interstate commerce be incidentally or indirectly affected, has no power to exclude from its limits foreign corporations or others engaged in interstate commerce, or, by the imposition of conditions, to fetter their right to carry on such commerce, or to subject them in respect to their transactions therein to requirements which are unreasonable or pass beyond the bounds of suitable local protection. Crutcher v. Kentucky, 141 U. S. 47, 35 L. ed. 649, 11 Sup. Ct. Rep. 851; Minnesota Rate Cases (Simpson v. Shepard) 230 U. S. 352, 401, 402, 410, 57 L. ed. 1511, 1542, 1543, 1546, 48 L. R. A. (N. S.) 1151, 33 Sup. Ct. Rep. 729 and cases cited; Barrett v. New York, 232 U. S. 14, 31, 58 L. ed. 483, 490, 34 Sup. Ct. Rep. 203, and cases cited.

"The contract and sale out of which the action arose were transactions in interstate commerce, and entirely legitimate notwithstanding the plaintiff's non-compliance with the state statute. (citing cases.) After delivery of the merchandise according to the contract, the plaintiff was lawfully entitled to the purchase price. The defendants were likewise obligated to pay it. And by reason of their refusal the plaintiff had a right of action on the contract. * * * But it * * * is here contended, that while the state could not make non-compliance with the statute a ground for forbidding or invalidating sales in interstate commerce, it could make such non-compliance a ground for preventing the maintenance of any action in the courts of the state, based upon such a sale; in other words, that the state, although unable to condition the right to make the sale or its validity upon a compliance with the statute, could so condition the right to sue for the purchase price in the courts of the state.

* * * * * * * *

"Of the first point it is enough to say that the right to demand and enforce payment for goods

sold in interstate commerce, if not a part of such commerce, is so directly connected with it and is so essential to its existence and continuance that the imposition of unreasonable conditions upon this right must necessarily operate as a restraint or burden upon interstate commerce. * * * We think that when a corporation goes into a state other than that of its origin to collect, according to the usual or prevailing methods, the purchase price of merchandise which it has lawfully sold therein in interstate commerce, it is there for a legitimate purpose of such commerce, and that the state cannot, consistently with the limitation arising from the commerce clause, obstruct or hamper the attainment of that purpose. * * * We think the mere statement of the conditions shows that they have no natural or reasonable relation to the right to sue which they are intended to restrict. * * *

"The second one, respecting the appointment of a resident agent upon whim process may be served, is particularly burdensome, * * *. If one state can impose such a condition others can, and in that way corporations engaged in interstate commerce can be subjected to great embarrassment and serious hazards in the enforcement of contractual rights directly arising out of and connected with such commerce. As applied to such rights we think the conditions are unreasonable and burdensome, and therefore in conflict with the commerce clause."

The same principle was applied in *Buck Stove & Range Co.* v. *Vickers*, 226 U. S. 205, 57 L. ed. 189; *Wilson-Moline Buggy Co.* v. *Hawkins*, 223 U. S. 713, memorandum opinion reversing the judgment below on the authority of International Text-Book Co. v. Pigg, *supra*.

In *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U.

S. 280, 282, 66 L. ed. 239, a similar statute of the state of Kentucky had been applied so as to prevent the maintenance of a suit in the state courts of Kentucky on a contract for the purchase and interstate transportation of grain. Holding that such application of the statute was unconstitutional and could not prevent the maintenance of such a suit, this court said:

> "A corporation of one state may go into another, without obtaining the leave or license of the latter, for all the legitimate purposes of such commerce; and any statute of the latter state which obstructs or lays a burden on the exercise of this privilege is void under the commerce clause. Crutcher v. Kentucky, 141 U. S. 47, 57, 35 L. ed. 649; Teleg. Co. v. Kansas, 216 U. S. 1, 27; International Textbook Co. v. Pigg, 217 U. S. 91, 112, 54 L. ed. 678, 687, 27 L. R. A. (N. S.) 493, 30 Sup. Ct. Rep. 481, 18 Ann. Cas. 1103; Sioux Remedy Co v. Cope, 235 U. S. 197, 59 L. ed. 193, 35 Sup. Ct. Rep. 57.
>
> * * * * * * * *
>
> "For these reasons we are of opinion that the transaction was a part of interstate commerce, in which the plaintiff lawfully could engage without any permission from the state of Kentucky, and that the statute in question, which concededly imposed burdensome conditions, was, as to that transaction, invalid because repugnant to the commerce clause."

This settled ruling which has been applied in all of the foregoing cases is directly applicable to this case and renders further citation or discussion of authorities unnecessary. Appellants contract with Brewster and the interstate shipment of goods to him out of which the action arose were transactions in interstate

commerce. The record shows that appellants were entitled to the balance sued for and the appellees were obligated to pay it. Appellants' right to make such a contract and to resort to the state courts of Arkansas, according to the usual mode of procedure there, to collect money due under it, was a necessary incident of interstate commerce upon which unreasonable and burdensome conditions could not constitutionally be imposed by a state statute. These statutes by requiring that the foreign corporation for which appellants were held to be acting as agents must file statements and designate an agent within the state to accept service of process, before it or appellants could make or enforce a contract involving interstate commerce, and that because of non-compliance with the statute, appellants could not enforce in the courts, their contract with Brewster did impose unreasonable and burdensome conditions on a necessary incident of interstate commerce and regulated such commerce in violation of the commerce clause.

For the foregoing reasons the judgment of the court below should be reversed.

Respectfully submitted,

FRANK F. NESBIT,
M. DANAHER,
Attorneys for Appellants.

SUPREME COURT OF THE UNITED STATES.

No. 76.—October Term, 1930.

Frank E. Furst and Fred G. Thomas, Partners, doing business under the firm name of Furst & Thomas, Appellants,
vs.
James G. Brewster, Ed A. Davis, and Henry M. Beaty.
} Appeal from the Supreme Court of the State of Arkansas.

[February 25, 1931.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The plaintiffs, copartners, doing business in Freeport, Illinois, brought this suit in the Circuit Court of Bradley County, Arkansas, against James G. Brewster, of Warren, Arkansas, to recover for goods sold and delivered to him pursuant to a contract, the performance of which was alleged to have been guaranteed by the defendants E. A. Davis and H. M. Beaty. By the terms of the contract, the firm of Furst & Thomas agreed to sell and deliver to Brewster, on board cars at Freeport, Illinois, or at their option at their nearest branch warehouse, at their current wholesale prices, their products in reasonable quantities as ordered by him, so long as the contract was in force and his account was in a satisfactory condition. Furst & Thomas agreed to give to Brewster free advice as to the best methods of selling to consumers the goods purchased by him under the contract. Brewster agreed to pay Furst & Thomas the regular wholesale prices, with specified discounts, the payments to be made weekly according to his cash sales and collections. On the termination of the contract, Brewster was to have the privilege of returning to Furst & Thomas his stock of unsold goods. The defendants pleaded that the goods delivered by the plaintiffs to Brewster were manufactured by a corporation, the Furst-McNess Company, organized under the laws of Illinois, with its principal place of business in Freeport, Illinois; that in making the contract, and the deliveries of goods thereunder, Furst

& Thomas acted as the agents of the Furst-McNess Company, and that the Furst-McNess Company had failed to comply with the statute of Arkansas, pertaining to foreign corporations, by filing a copy of its charter and a statement of its assets and liabilities, by designating its general offices in the State of Arkansas, and by designating an agent for the service of process in that State. It was alleged that, in consequence, this suit could not be maintained, as the statutes of Arkansas expressly forbade it.[1]

At the trial the terms of the contract, as above stated, and the transactions under it, were shown. It appeared that Furst & Thomas did business at Freeport, Illinois; that they received at that place orders from the defendant Brewster; and that the goods so ordered were shipped to Brewster at Warren, Arkansas, from the branch warehouse of Furst & Thomas at Memphis, Tennessee. The goods thus shipped had been obtained by Furst & Thomas in Illinois from the Furst-McNess Company, an Illinois corporation doing business at Freeport, Illinois. It was admitted

[1]The statutory provisions thus invoked are found in sections 1826 and 1832 of Crawford & Moses Digest of the Statutes of Arkansas (Acts 1907, p. 744) which provide as follows: "1826. Every company or corporation incorporated under the laws of any other State, Territory, or country, including foreign railroad and foreign fire and life insurance companies, now or hereafter doing business in this State, shall file in the office of the Secretary of State of this State a copy of its charter or articles of incorporation or association, or a copy of its certificate of incorporation, duly authenticated and certified by the proper authority, together with a statement of its assets and liabilities and the amount of its capital employed in this State, and shall also designate its general office or place of business in this State, and shall name an agent upon whom process may be served.

"1832. Any foreign corporation which shall fail to comply with the provisions of this act, and shall do any business in this State, shall be subject to a fine of not less than $1,000.00, to be recovered before any court of competent jurisdiction, and all such fines so recovered shall be paid into the general revenue fund of the county in which the cause of action shall accrue, and it is hereby made the duty of the prosecuting attorneys to institute said suits in the name of the State, for the use and benefit of the County in which the suit is brought, and such prosecuting attorney shall receive as his compensation one-fourth of the amount recovered; and as an additional penalty any foreign corporation which shall fail or refuse to file its articles of incorporation or certificate as aforesaid can not make any contract in this State which can be enforced by it either in law or in equity, and the complying with the provisions of this act after the date of any such contract, or after any suit is instituted thereon, shall in no way validate said contract."

that this corporation had not been authorized to do business under the laws of Arkansas. Evidence was also introduced for the purpose of showing that Furst & Thomas were agents of the Furst-McNess Company and to support the contention that the transactions between Furst & Thomas and the defendant Brewster under the contract in suit were those of principal and agent.

The evidence was submitted to the jury upon the question of agency. The Court refused to give the instruction, which the plaintiffs requested, that the statutes of Arkansas (*supra*) had no application, for the reason that, if applied, they would contravene Article 1, section 8, clause 3, of the Constitution of the United States giving to the Congress power to regulate commerce among the States. The jury found in favor of the defendants. A motion to set aside the verdict upon the ground, among others, of error in refusing the request above-mentioned, was denied. The Supreme Court of Arkansas, affirmed the judgment, following its earlier decision in a similar case (*Furst & Thomas* v. *Hartsell*, 172 Ark. 1118), where it was held that the determinative question was whether the relationship between the parties was that of vendor and vendee or principal and agent; that the contract in suit was ambiguous and that it was proper to submit the question of the effect of the contract to a jury for its determination. *Furst & Thomas* v. *Brewster*, 180 Ark. 1167; 21 Southwestern (2d) 863. The plaintiffs bring their appeal to this Court, contending that the statutory provisions in question, as they have been applied by the state court, are repugnant to the commerce clause of the Federal Constitution.

The question is not as to sales made by Brewster in Arkansas, but as to the transactions between Brewster and Furst & Thomas. These transactions were clearly in interstate commerce, whether or not Furst & Thomas were agents of the Furst-McNess Company, and whether or not Brewster was an agent of Furst & Thomas. In pursuance of orders sent by Brewster in Arkansas to Furst & Thomas in Illinois, goods were shipped to Arkansas from the branch warehouse of Furst & Thomas in Tennessee. The ordering and shipment of the goods constituted interstate commerce, and the obligation to pay and the right to recover the amount due, according to the contract pursuant to which the goods were sent, arose in the course of that commerce. In *International Text Book Company*

v. *Pigg*, 217 U. S. 91, 107, this Court quoted with approval the language of the Circuit Court of Appeals for the Eighth Circuit, speaking by Judge Sanborn, in *Butler Bros. Shoe Company* v. *United States Rubber Company*, 156 Fed. 1, 17,[2] a case of consignments to a factor, that "all interstate commerce is not sales of goods. Importation into one State from another is the indispensable element, the test, of interstate commerce; and every negotiation, contract, trade, and dealing between citizens of different States, which contemplates and causes such importation, whether it be of goods, persons, or information, is a transaction of interstate commerce." Such commerce comprehends all the component parts of commercial intercourse between different States, and, according to established principle, any State statute which obstructs or lays a direct burden on the exercise of the privilege of engaging in interstate commerce is void under the commerce clause. *Crutcher* v. *Kentucky*, 141 U. S. 47, 57; *Western Union Telegraph Company* v. *Kansas*, 216 U. S. 1, 27; *Dahnke-Walker Milling Company* v. *Bondurant*, 257 U. S. 282, 290, 291. Accordingly, when a corporation goes into a State other than that of its origin to collect, according to the usual or prevailing methods, the amount which has become due in transactions in interstate commerce, the State cannot, consistently with the limitation arising from the commerce clause, obstruct the attainment of that purpose. *Sioux Remedy Company* v. *Cope*, 235 U. S. 197, 204.

In the case last cited, it was recognized that a foreign corporation seeking to enforce such a right in the courts of a State may be required to conform to the prevailing modes of proceeding in those courts and to submit to the usual rules respecting costs, the giving of security therefor, and the like. But the Court, examining the conditions imposed by the State statute, which were similar to those of the provisions here in question, found that they had "no natural or reasonable relation to the right to sue which they are intended to restrict"; that the statutory requirements relating to the appointment of a resident agent upon whom process might be served was particularly burdensome because it required the foreign corporation to subject itself to the jurisdiction of the courts of the State in general, as a prerequisite to suing in any of them even in a single instance. The Court said that in

[2]Certiorari was denied by this Court. 212 U. S. 577.

that way corporations engaged in interstate commerce could "be subjected to great embarrassment and serious hazards in the enforcement of contractual rights directly arising out of and connected with such commerce." See, also, *International Text Book Company* v. *Pigg, supra,* at pp. 112, 114; *Buck Stove Company* v. *Vickers,* 226 U. S. 205, 215, 216; *Dahnke-Walker Milling Company* v. *Bondurant, supra.*

We are of the opinion that the provisions of the statutes of Arkansas, as applied in this case, are in conflict with the commerce clause.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.